

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 98 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

PATEL KOHYABHAI JETHABHAI

Versus

JAMBUISAR GROUP GRAM PANCHAYAT

Appearance:

MR RN SHAH for Petitioner
Respondent No. 1 served

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 24/11/2000

ORAL JUDGEMENT

1. This Second Appeal is filed by appellant, original plaintiff, being aggrieved by the judgment and order dated 16th November, 1981, passed by Assistant Judge, Sabarkantha at Himatnagar, in Regular Civil Appeal

No. 28 of 1981, whereby the learned Assistant Judge, Sabarkantha at Himatnagar, upheld the judgment and decree of Civil Judge (JD), Modasa, in Regular Civil Suit No. 107 of 1977, dismissing the suit of the plaintiff present appellant.

2. As per the brief facts of the case, the plaintiff being the owner of Survey No. 73 wada land at village Umedpur, after persuasion by the village people and leaders, allotted 2 gunthas of land out of survey No. 73 to the village for the construction of additional room for the school of the village Umedpur. It was the case of the plaintiff that in lieu of this 2 gunthas of land, village people had agreed vide resolution that he will be given two acres land from Survey No.9, old survey No. 24. Thereafter, it appears that panchayat concerned considered this occupation of the plaintiff to be an encroachment and issued notice to remove the same against the plaintiff. Plaintiff filed Regular Civil Suit No. 76 of 1977 against such notice, but he withdrew the suit with permission to file fresh suit on the same cause of action and thus the present suit by the plaintiff came to be filed for permanent injunction that unless and until the defendants present respondents returns the 2 gunthas of land of Survey No.73, they were not entitled to claim back the possession of the plaintiff of Survey No.24 and for other consequential reliefs. The present respondents - defendants on various grounds defended the suit, inter alia, defendant panchayat urged that if any resolution was passed between village people and the plaintiff, the same was not binding to the panchayat. Panchayat never agreed to give any land to the plaintiff in exchange of 2 gunthas of wada land of Survey No.73. According to defendants - respondents, the plaintiff had encroached upon the land bearing Survey No. 9, old survey No. 24, therefore, the plaintiff was served with the notice and ultimately before filing of the suit, the plaintiff was dispossessed from the land on 16th May, 1977, dismissal of suit therefore urged by the respondents.

3. After recording of the evidence and hearing both the parties, trial court held that the plaintiff was not given possession of two acres of land from survey No. 24 by the defendants and the plaintiff was in possession of 2 acres land in survey No. 24 of village Umedpur without any legal authority and therefore Regular Civil Suit No. 107 of 1977 filed by the plaintiff in the Court of Civil Judge (JD), Modasa, came to be dismissed on 21st July, 1987. Being aggrieved, the plaintiff filed the above said Regular Civil Appeal No. 28 of 1981 in the Court of District Judge, Sabarkantha at Himatnagar and learned

Assistant Judge, Sabarkantha at Himatnagar dismissed the Appeal of the plaintiff on 16th November, 1981 and hence this Second Appeal.

4. Learned Advocate Mr. R.N. Shah for the appellant was heard. However, though notices are served, nobody appears on behalf of the respondents.

5. While admitting this Appeal, following substantial question of law were framed by this Court :

1. From the proved and admitted fact that the plaintiff parted with the possession of 2 gunthas of survey No. 73 (Wada Land) belonging to him and given to the panchayat for constructing room for school without any consideration and from the further fact that a resolution to that effect was passed, it should have been held that the plaintiff is in possession of 2 acres of Survey No.24 Gaucher Land in exchange of his land being given to the panchayat.

2. In the facts and circumstances of the case, it should have been held that the plaintiff gave wada land to the panchayat for constructing room for school without any consideration and in exchange of that, 2 acres of gaucher land bearing Survey No. 24 given to him on 26.2.1968.

3. In the facts and circumstances of the case, it should have been held that the panchayat is stopped from initiating any proceeding under the provision of the Gujarat Panchayat Act, as the plaintiff was assured by the members of the Panchayat and village people that this transaction will be regularised by the panchayat.

4. In the facts and circumstances of the case, it should have been held that the panchayat had no authority under the land to initiate any proceeding u/s 94 of the Gujarat Panchayat Act.

6. While scrutinising the record and the contentions

raised by the appellant, it clearly appears that none of the courts below committed error of law in coming to the conclusion. The plaintiff - present appellant failed to establish by cogent evidence that the defendants entered into contract to give land from Survey No.24 to the plaintiff. Writing produced at Exh.37 does not bear the signature of the office bearers of the defendant panchayat. Therefore, it was clear that if any understanding was arrived at, the same was between the village people and the plaintiff, and was not binding to the panchayat concerned, assurance given by the village people cannot be equated with the assurance of the panchayat concerned. Therefore, there was nothing on the record to denote that the panchayat agreed to give any land to the plaintiff in exchange of land given by the plaintiff to the village for the construction of rooms for the school. Plaintiff has failed to produce any record from the panchayat office to the extend that the panchayat any time resolved to agree to the request of the plaintiff to give land from Survey No. 24 to the plaintiff. The panchayat concerned had limitation under the law to transfer, sale or lease property though in the present case there is no evidence to show that the panchayat concerned has agreed to give any land to the plaintiff in exchange. Even then, the legal position remains that according to Sec. 98 sub-sec. (2) of the Gujart Panchayat Act, no lease, sale or other transfer or any immovable property vest in or acquired by the panchayat shall be valid unless such lease, sale or other transfer has been made with the previous sanction of the competent authority and, therefore, the plaintiff has failed to establish his case on this ground.

7. Having regard to the above said decision, it is clear that none of the courts below erred in law in appreciating the evidence on record.

8. The Appeal, therefore, is without any substance. The substantial questions of law raised by this Court are replied accordingly.

9. In this view of the matter, this Appeal Stands dismissed with no order as to costs.

(J.R. Vora, J.)